



# TOWN OF NEWINGTON

200 Garfield Street Newington, Connecticut 06111

## **Town Planner**

Paul Dickson  
Town Planner

### **Memorandum**

**To:** TPZ Commission  
**From:** Town Planning Staff  
**Date:** May 8, 2025

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**Petition TPZ-25-9:** Pre-Application for a discussion of the required front yard requirements of section 6.10.4 along the Berlin Turnpike, specifically 2929 Berlin Turnpike. Owner: Berlin Turnpike 2929 LLC, Applicant: Matt Stephan, Contact: Frank Vacca, Representing: Staypoint Properties.



## **Staff Report:**

The applicant is seeking to have a discussion with the TPZ before they apply for a Site Plan to increase the size of the parking lot. The discussion centers around the buffering requirements for properties fronting the Berlin Turnpike. Specifically, section 6.10.4 of the NZR which reads as follows:

### **6.10.4 Berlin Turnpike**

On the Berlin Turnpike, the front yard green space and landscape area is most important to the public interest for the preservation and enhancement of property values, and the control of traffic function and reduction of hazards.

- A. Alteration and additions affecting 25 percent of the gross floor area or more for business and industrial uses shall make substantial effort to add green space and landscaping, particularly in the front yard.
- B. No accessory structures, above-ground utilities, or pavement shall be placed in the 35' minimum front yard.

The newly opened Casadore restaurant has been very successful to date. The success and popularity of the restaurant, along with the high level of staffing utilized by the restaurant, has caused reported parking issues with customer vehicles parking in non-parking areas and obstructions to the fire lane. To address these issues the owners of the property and business cleared a vegetated area to the south of existing parking in order to expand their parking field.

Currently the business requires more parking and wishes to develop the recently disturbed area to the south of the existing parking area. The restaurant owner has also entered into an agreement to utilize 50 parking spaces at the Price Chopper property in order for their employees to park while working.

The work performed onsite for the temporary parking area was done without consultation with Town staff. The improvements installed onsite require a Site Plan approval from the TPZ. Clearing also encroached into regulated wetland areas and requires an application to the Conservation Commission. The Town Planner and Town Engineer were made aware of the clearing and temporary parking lot and have discussed the issues with the property owner and restaurant operator and made them aware of the requirements to obtain approvals. In one of the discussions to rectify the current situation, the Town Planner advised the owner and their engineer about the requirements of section 6.10.4. and the prohibition of the installation of pavement within the 35' front yard along the Berlin Turnpike.

## **Prior Approvals:**

The applicant of this Pre-Application discusses past site plans in their narrative. Petition 45-92 for a site plan was approved October 14, 1992 for a restaurant. The site plans showed a concept for a future building and parking in a phase 2 development that was not pursued. The Certificate of Action for Petition 45-92 specifically states in condition 2 that "Approval is granted only for the phase I Bertucci's Restaurant." No building activity shall be permitted on the Phase II section

of this property until a final site plan and building elevations are approved by the Commission. The 1992 site plan has expired; however, staff has included the site plan sheet for the Commission's information.

Petition 31-23 was approved January 10, 2024. That site plan modification called for alterations to the building and parking area. Those construction activities have been completed. Staff has included the existing conditions survey from that plan set.

### **Non-conformities:**

The applicant has cited section 8-2(d) and more specifically section 8-2(d)(4)(C) of the Connecticut General Statutes. Staff has included the complete section of 8-2(d)(4) and section 8-13a for the Commission's reference at the end of this document.

The Town of Newington's zoning regulations regarding non-conformities currently reside in Section 5.1 Non-Conforming Lots, Land Use and Buildings or Structures of the Newington Zoning regulations. These regulations contain a temporal restriction regarding a non-conforming use of land being required to conform with the regulations after ceasing after 12 months. The temporal requirement does not align with the general statutes and case law, and staff recommends that the Commission consider the statutes contemplations for non-conformities.

Section 8-2(d)(4) of the CGS specifically states that the zoning regulations shall not "provide for the termination of any nonconforming use solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use."

This section also notes that "The demolition or deconstruction of a nonconforming use, building or structure shall not by itself be evidence of such property owner's intent to not reestablish such use, building or structure."

An important aspect of the burden for proving a non-conforming statue is codified in CGS section 8-13a (2) that states "A property owner shall bear the burden of proving that a structure qualifies as a nonconforming structure pursuant to subdivision (1) of this subsection."

The burden of proof is on the property owner and non-conformities are prohibited from being increased. The owner has been requested to show evidence that the area that is planned to be paved, and asserted as a nonconformity, is pre-existing and non-conforming for any area within the 35' required buffer that is proposed to be paved. Staff has spoken with the applicant's representative and it was noted that more information would be provided at the time of the meeting.

### **Commission:**

The primary issue at hand is the applicant's assertion of existing non-conforming pavement within the 35' front yard. The applicant has provided a proposed parking plan that includes an addition to the onsite parking lot which includes pavement within the 35' front yard. The

applicant wishes to engage the Commission in a discussion about the proposed parking expansion and conflict with the NZR.

**Connecticut General Statutes Chapter 124 Zoning**

**Sec. 8-2. Regulations**

**(d)**

(d) Zoning regulations adopted pursuant to subsection (a) of this section shall not:

...

(4) (A) Prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations; (B) require a special permit or special exception for any such continuance; (C) provide for the termination of any nonconforming use solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use; or (D) terminate or deem abandoned a nonconforming use, building or structure unless the property owner of such use, building or structure voluntarily discontinues such use, building or structure and such discontinuance is accompanied by an intent to not reestablish such use, building or structure. The demolition or deconstruction of a nonconforming use, building or structure shall not by itself be evidence of such property owner's intent to not reestablish such use, building or structure;

**Connecticut General Statutes Chapter 124 Zoning**

**Sec. 8-13a. Nonconforming buildings, structures and land uses.**

(a)(1) When a building or other structure is so situated on a lot that it violates a zoning regulation of a municipality that prescribes the location of such a building or structure in relation to the boundaries of the lot or when a building or structure is situated on a lot that violates a zoning regulation of a municipality that prescribes the minimum area of the lot, and when such building or structure has been so situated for three years without the institution of an action to enforce such regulation, such building or structure shall be deemed a nonconforming building or structure in relation to such boundaries or to the area of such lot, as the case may be. For purposes of this section, "structure" has the same meaning as in the zoning regulations for the municipality in which the structure is located or, if undefined by such regulations, "structure" means any combination of materials, other than a building, that is affixed to the land, including, without limitation, signs, fences, walls, pools, patios, tennis courts and decks.

(2) A property owner shall bear the burden of proving that a structure qualifies as a nonconforming structure pursuant to subdivision (1) of this subsection.

(b) When a use of land or building (1) is on a parcel that is fifteen or more acres, (2) is included in industry numbers 1795, 2951, 3272 or 4953 of the Standard Industrial Classification Manual, United States Office of Management and Budget, 1987 edition, (3) is not permitted by the zoning regulations of a municipality, (4) has been established and continued in reasonable reliance on the actions of the municipality, and (5) has been in existence for twenty years prior to July 8, 1997, without the institution of court action to enforce the regulations regarding the use, such use shall be deemed a legally existing nonconforming use and may be continued. Nothing in this subsection

shall be construed to exempt such use from the requirements of the general statutes or of any other municipal ordinance.

### **Newington Zoning Regulations**

#### **Section 5.1 Non-Conforming Lots, Land Use and Buildings or Structures**

Within the zones established by this regulation or amendments that may later be adopted, there exist lots, structures, and uses of land and structures which were lawful before this regulation was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this regulation or future amendment.

It is the intent of this regulation to permit these non-conformities to continue until they are removed, but not to encourage their survival. Such uses are declared by this regulation to be incompatible with permitted uses in the zones involved. It is further the intent of this regulation that non-conformities shall not be enlarged upon, extended or expanded if such a change increases the non-conformity, or be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

A non-conforming use of structure, a non-conforming use of land, or a non-conforming use of a structure and land shall not be extended or enlarged after passage of this regulation by attachment on a structure or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which could be prohibited generally in the zone involved. To avoid undue hardship, nothing in this regulation shall be deemed to require a change in the plans, construction or designated use of any structure on which actual construction was lawfully begun prior to the effective date of the adoption or amendment of this regulation.

...

5.1.2 The lawful use of land existing at the time of the adoption of these regulations or of any amendment hereto, although such use does not conform to the provisions hereof, may be continued; but if such use ceases for a period of 12 months, or is changed to a conforming use, all future use of said land shall be in conformity with these regulations.

...

5.1.6 When a building or structure is non-conforming only in regard to height, area or yard requirements, the reconstruction or structural alteration will be permitted if said building or structure is destroyed or damaged by fire or casualty. No such reconstruction or structural alteration shall increase the non-conformity. (Effective 12/01/2001)